

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH**

IN RE THE APPLICATION OF:

JACQUELINE RYSER
1475 North Main Street, #A203
Layton, Utah 84041

License Pending.

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2015-108-LC
Enf. Case No. 3667

Mark E. Kleinfield
Presiding Officer

STATEMENT OF THE CASE

THIS MATTER concerning whether the Applicant's application for a Resident Producer Individual license should be approved came on to be heard before the Commissioner of the Utah State Insurance Department ("*Department*") on Thursday, October 1, 2015 at 10:00 o'clock A. M. Mountain Time, with Mark E. Kleinfield, Administrative Law Judge, serving as designated Presiding Officer.

Said hearing being held at the Department's offices, Utah State Office Building, Room 3112, Salt Lake City, Utah 84114, having been convened at the designated time of 10:00 (10:17) A. M., October 1, 2015 and adjourned at 11:03 A. M. on said same day.¹

¹ The Hearing Officer left the record open to the close of business on Friday, October 9, 2015 for the Applicant to file further documentation as part of her position spoke to resolution of outstanding criminal matters. SEE Department Exhibit No.s 4, 5 and 6.

Appearances:

Gary D. Josephson, Assistant Attorney General, State of Utah, Salt Lake City, Utah 84114.

Jacqueline Ryser, Applicant, pro se.

By the Presiding Officer:

Pursuant to a September 10, 2015 "*Notice of Conversion to Formal Proceeding and Notice of Hearing*" a hearing was conducted on October 1, 2015 in the above-entitled proceeding. The Applicant was present at that time.

The hearing was convened and conducted as a **formal hearing** in accordance with Utah Code Ann. Sections 63G-4-204, 63G-4-205, 63G-4-206, 63G-4-207 and 63G-4-208 and Administrative Rule R590-160-6.

ISSUE, BURDEN and "STANDARD OF PROOF"

1. The basic issue(s) in this case is (are):

- a. Was Applicant's application for issuance of a Resident Producer Individual license improperly denied?
- b. Has the Applicant presented sufficient evidence to show that the Department's denial was not justified on the record?
- c. Has the Applicant presented sufficient evidence that would justify the reversal or modification of such denial?

(SEE also Paragraph 2 under *DISCUSSION-ANALYSIS*.)

2. The "*burden of proof*" or "*burden of going forward*" in this case as to the above issue(s) is on the Applicant.

3. As per Utah Administrative Code Rule, R590-160-5(10) as to the above and foregoing “issue(s)” or “question(s)” to be answered the “*standard of proof*” as to issues of fact is to be proven by a “*preponderance of the evidence*”.

Both the Department and the Applicant presented brief opening statements.

Thereafter, evidence was presented and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Department:

Randy Overstreet, Director, Producer Licensing, Utah Insurance Department.

For the Applicant:

Jacqueline Ryser, Applicant

Both of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits:

Nine (9) exhibits, SEE file.

(Also taken administrative notice of as part of the Producer Licensing files were the Applicant’s August 7, 2015 application (Exhibit No. 1); FBI records check, UCBI records check (Exhibit No. 9), a the Department’s September 1, 2015 letter of denial (Exhibit No. 2) and the Applicant’s September 2, 2015 request for hearing (Exhibit No. 3).

(No objection being made which were accepted and entered.)

The Applicant offered the following exhibits:

1. **Applicant’s Exhibit No. 1**, consisting of three (3) type written or printed pages, being a copy of an apparent Receipt dated September 9, 2015 referencing a U. S. Bankruptcy Court for the District of Utah filing regarding the Applicant.

(No objection being made which was accepted and entered.)

Argument followed.

The Presiding Officer being fully advised in the premises and taking administrative notice of the files and records of the Department, now enters his *Findings of Fact, Conclusions of Law, and Order*, on behalf of the Commissioner and the Department:

FINDINGS OF FACT

I, find by a preponderance of the evidence, the following facts:

Preliminary-Procedural Facts

(Paragraphs 1-7)

1. The Utah Insurance Department (“Department”) is a governmental entity of the State of Utah. The Department as per Utah Code Ann. Section 31A-2-101 is empowered to administer the *Insurance Code*, Title 31A, Utah Code Ann., 1953, as amended.

2. The Applicant, Jacqueline Ryser:

a. is a resident of the State of Utah and at the time of his application and at the time of hearing maintained a residence address of 1475 North Main Street, #A203, Layton, Utah 84041;

and

b. is not presently nor previously been licensed by the Department to conduct or be engaged in any capacity in the insurance business in the State of Utah.

3. The Applicant on or about August 7, 2015 filed her application with the Department for issuance of a “*Resident Producer Individual License*”. (SEE Administrative file.)

4. The Department on or about September 1, 2015 in writing denied Applicant's August 7, 2015 application for "one or more of the following" reasons:

"UCA 31A-23a-111-5(b)(iv) – failure to pay a final judgment rendered against you in this state ."

5. That included in said denial were instructions informing Applicant of her right to an "*informal hearing*" if a timely request is made in writing within fifteen (15) days.

6. The Applicant on September 2, 2015 filed her written "*request for hearing*" with the Department. (SEE Administrative file.)

7. That based on the preliminary facts as set forth in Paragraphs 1 through 6, immediately above, through means of a September 10, 2015 "*Notice of Conversion to Formal Proceedings and Notice of Hearing*", mailed to the Applicant at her referenced this present formal hearing was set for October 1, 2015 at 10:00 A. M. Mountain Time.

Operative Facts
(Paragraphs 8 -9)

8. The Applicant is a resident of the State of Utah.

9. The Applicant:

a.i. has been involved in three (3) criminal proceedings over the past six (6) plus years commencing with September 28, 2009 Driving on Suspension Class "B" misdemeanor in the West Jordan Justice Court and ending with a last docket entry of August 18, 2015 in regards to a Drive on Suspension Class "C" misdemeanor in the Roy/Weber County Justice Court. SEE Department Exhibit No.s 4, 5 and 6; and

iii is the Defendant in two (2) civil debt collection matters. With one (1) being out of the Sandy Justice Court as a result of a July 2, 2013 default judgment in the amount of \$678.00 with a still outstanding balance of an undetermined amount; and one (1) being

out of the 3rd District Court, Salt Lake City as a result of a June 21, 2013 default judgment in the amount of \$4,376.85 with a still outstanding balance of an undetermined amount; SEE Department Exhibit No.s 7 and 8; and

b. failed to disclose the particulars of any of the same as set forth by her “No” responses to the criminal background question and or the civil judgment questions on her August 7, 2015 application; SEE Department Exhibit No. 1.

DISCUSSION-ANALYSIS

(Paragraphs 1-9)

1.a. The Applicant concurs that the Department’s presentation of the facts are “correct” although she differs in the characterization or interpretation and import of the above referenced operative facts, but in substance “concurred” as to the basic *chronology* and **core** facts.

b. The record now being complete sets forth competent and credible evidence for the entry of the following analysis.

2. The question(s) presented is:

a. “Whether the Applicant has presented sufficient evidence to show that the Department’s September 1, 2015 letter of denial of the Applicant's August 7, 2015 application for licensure as a “*Resident Producer Individual*” was not justified on the record?”;

b. “Whether the Applicant has presented sufficient evidence that would justify the reversal or modification of such September 1, 2015 denial?”; and

c. “Whether as per U. A. C. Rule, R590-160-5(10) as to each of the above and foregoing “issues” or “questions” the Applicant has so shown such evidence by a “*preponderance of the evidence*” sufficient to carry Applicant’s burden of proof?”

3. Primary Applicable Pertinent Statutes, Administrative Rules and Precedent are as follows (although others may be otherwise specifically cited within the body of this “Order on Hearing”):

a. Section 31A-23a-107, Utah Code Ann., reads as follows:

“31A-23a-107. Character requirements.

Each applicant for a license under this chapter shall show to the commissioner that:

(1) the applicant has the intent in good faith, to engage in the type of business that the license applied for would permit;

(2) if a natural person, the applicant is competent and **trustworthy**; or, if the applicant is an agency, all the partners, directors, or principal officers or persons having comparable powers are trustworthy, and that it will transact business in such a way that all acts that may only be performed by a licensed producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary are performed exclusively by natural persons who are licensed under this chapter to transact that type of business and designated on the agency's license;

(3) the applicant intends to comply with Section 31A-23a-502; and

(4) if a natural person, the applicant is at least 18 years of age.”

(EMPHASIS ADDED).

4. The Applicant failed to overcome the Department’s presentation.

5. a. The Applicant’s failure to fully disclose at the time of her filing of her application shows a primary lack of responsibility revolving around a basic pre-requisite to work in any capacity in any profession or occupation or business venture, especially the insurance business ----- *the ability to tell the truth and be honest.*

b. The characteristic of trustworthiness is **the** prime character qualification of Section 31A-23a-107, U. C. A., for all other characteristics requisite to engage in the insurance industry for the protection of the public interest of necessity flow from it. and the August 7, 2015 application’s **failure to disclose** indicates to the Presiding Officer a substantial gap of the same in the Applicant.

6.a.i. The Applicant presented a receipt of a recent bankruptcy filing. From such it appears that the first meeting of creditors has not yet taken place nor that the Applicant (Debtor) has been discharged. Even if fully discharged such does not nor would negate the fact that two (2) default judgments have been outstanding for **more than two (2) plus years**. The civil dockets in the respective cases show defaults, garnishments and executions as well as failures to appear at supplemental proceedings and failures to live up to payment agreements and schedules.

ii. In regards to the criminal matters the Applicant referenced she did not quite understand the question and or on advice of others didn't feel she needed to answer "yes" or explain her past, albeit not major, involvement with the criminal justice system. Again via reference to the respective dockets one sees failures to appear and failures to comply with payment agreements.

iii.(A) In both the criminal as well as the civil matters it is not so much they exist, but that a pattern of failure to appear or respond or rather a disregard of the system is what gives great concern. The practice or profession of insurance is one of relatively strict compliance to law and rules and procedures.

(B) Such is not to say the Applicant has not righted or started righting her ship and could prove to be productive in the insurance and or business world. Her initiating bankruptcy may well be evidence of making such a directed decision. She has yet to be discharged. She has yet to have shown a consistent problem free history. Typically a five (5) year at a minimum basis has been viewed as necessary as to authorizing even a probationary license in most instances. Here the waters are muddied as to has and if and when such five (5) years even started.

7. The Department in issuing a license to the Applicant or any individual in comparable circumstances to the Applicant would be breaching its responsibilities to the public.

8. a. The Presiding Officer having heard the testimony and reviewed the documentary evidence can only weigh what is before him.

b. Here in the **present** instance the burden is/was on the Applicant to:

i. **Present** sufficient evidence to show that the Department's denial was not justified on the record; and

ii. **Present** sufficient evidence that would justify the reversal or modification of such denial.

c. This the Applicant has failed to do.

d. Whether the Applicant seeks to apply in the future she would be best served to at **a minimum wait 5+ years** after her discharge in bankruptcy as well as complete resolution of any criminal matters.

e. The Applicant's August 7, 2015 application was properly denied based on the record before the Department.

BASED ON THE ABOVE AND FOREGOING FINDINGS OF FACT and discussion-analysis the Presiding Officer enters the following:

CONCLUSIONS OF LAW

1. The Applicant does not meet the character qualifications for licensing outlined in Section 31A-23a-107, UCA, 1953, as amended.

2. The issuance of a “*Resident Producer Individual*” license would be in contravention of the intent and purpose of Section 31A-23a-107, UCA , which based on “Conclusions of Law” No.1, immediately above, the Department in the practice of good public policy and the protection of the public welfare cannot at this time do.

3. The Department’s “*letter of denial*” under date of September 1, 2015 should be affirmed.

4. The Applicant's August 7, 2015 application for licensure as a “*Resident Producer Individual*” should be denied.

AND BASED ON THE ABOVE AND FOREGOING CONCLUSIONS OF LAW
the Presiding Officer enters the following:

ORDER

WHEREFORE, IT IS ORDERED that:

1. The Department’s “*letter of denial*” under date of September 1, 2015 is **affirmed**;
and

2. The Applicant’s August 7, 2015 application for licensure as a “*Resident Producer Individual*” is **denied**.

DATED and ENTERED this 13 day of October, 2015.

**TODD E. KISER,
INSURANCE COMMISSIONER**





MARK E. KLEINFELD
ADMINISTRATIVE LAW JUDGE and
PRESIDING OFFICER

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Salt Lake City, Utah 84114
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ADMINISTRATIVE AGENCY REVIEW

Administrative Agency Review of this Order may be obtained by filing a Petition for Review with the Commissioner of the Utah Insurance Department within thirty (30) days of the date of entry of said Order consistent with Utah Code Ann. Section 63G-4-301 and Administrative Rule R590-160-8.

Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(R590-160-8 and Section 63G-4-401)

JUDICIAL REVIEW

As an “**Formal Hearing**” after agency review judicial review of this Order may be obtained by filing a petition for such review consistent with Utah Code Ann. Section 63G-4-403.


ADMINH.Ryser.IADenia.10-xx-15

CERTIFICATE OF MAILING

The undersigned certifies on this date, a true and correct copy of the forgoing ORDER ON HEARING was mailed, postage prepaid, to the following:

Jaqueline Ryser
1475 North Main Street, #A203
Layton, UT 84041
&
JACKIE.RYSER89@GMAIL.COM

DATED this 13Th day of October, 2015



LINDA HARDY
UTAH INSURANCE DEPARTMENT
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